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**From:** Manzanilla, Enrique  
**Sent:** Wed 12/6/2017 4:16:38 PM  
**Subject:** FW: Anaconda Deferral Agreement

FYSA

**From:** Mackey, Cyndy  
**Sent:** Wednesday, December 6, 2017 7:51 AM  
**To:** Kelly, Albert <kelly.albert@epa.gov>  
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**Subject:** Anaconda Deferral Agreement

Kell

I understand that significant progress is being made on the Anaconda deferral agreement and want to be sure that you are aware of OSRE's concerns regarding a few important issues that need to be preserved in this agreement to preserve CERCLA protectiveness/standards under the ARC deferral agreement. To do this, we recommend that EPA not accept the following changes to the Anaconda deferral agreement:

1. We cannot say (page 1) that the NV-ARC AOC is consistent with the deferral guidance, because it is not.
2. TI waiver: must use the CERCLA TI waiver process, not Nevada's more lenient process.
3. Language regarding "significant and valid concerns"... keep it and keep it broad. Don't narrow what significant and valid mean by further defining it.
4. Delete the following last paragraph/sentence since a MOU is not the appropriate vehicle for this type of promise:

*Notwithstanding these reservations, unless and until this Deferral Agreement is terminated in accordance with Section VI.A or VI.B, EPA shall not take any administrative or civil action under Section 106 of CERCLA, 42 U.S.C. 9206(a), ordering*

*or requiring performance of any response action at the Site that is in addition to or inconsistent with those being implemented by NDEP under this Deferral Agreement.*

Let me know if further information is needed from OSRE on this matter. I am still at the Brownfield Conference but can be available for a conference call with advance notice. Thanks.

Cyndy Mackey

Director, Office of Site Remediation Enforcement

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